

III. REMARKS

Claims 1-7 and 21-26 are pending in this application. By this Amendment, claims 1 and 21 have been amended. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the above amendments and following remarks is respectfully requested.

In the Office Action, claims 1-3 and 6-7 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Smith et al. (USPN 6,255,233), hereinafter “Smith”; and claims 4-5 and 21-26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Smith in view of Todd (USPN 6,733,830). Applicants respectfully submit that the claimed invention is allowable for the reasons that follow.

With respect to independent claim 1, Applicants submit Smith does not disclose, *inter alia*, that “a composition of the first non-discrete transitional dielectric sub-layer varies gradually through thickness thereof from a first composition substantially the same as the first dielectric sub-layer where the first non-discrete transitional dielectric sub-layer contacts the first dielectric sub-layer to a second composition substantially the same as the second dielectric sub-layer where the first non-discrete transitional dielectric sub-layer contacts the second dielectric sub-layer.” In Smith, the silicon oxynitride layer 40, 190, which are alleged to disclose the first non-discrete transitional dielectric sub-layer of the claimed invention, do not have a first composition substantially the same as silicon nitride layers 20, 180, and do not have a second composition substantially the same as silicon oxide layer 30/SiOF layer 200. In Smith, the percentage of oxygen in the silicon oxynitride layer 40 changes, but the composition of silicon oxynitride layer

40 is not substantially the same as silicon nitride layer 20 at interface 50, nor substantially the same as silicon oxide layer 30 at interface 60. (*See*, e.g., FIG. 1 and col. 3, lines 48-57). In view of the foregoing, Smith does not anticipate claim 1 of the claimed invention.

The above arguments also apply to claim 21, as Todd does not overcome, *inter alia*, this deficiency of Smith. That is, the suggested combination of Smith and Todd does not disclose or suggest all claim features.

The dependent claims are believed allowable for the same reasons, as well as for their own additional features.

Applicants respectfully submit that the application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

/Spencer K. Warnick/

Spencer K. Warnick
Reg. No. 40,398
(JZ)

Date: February 27, 2007

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)